DEPARTMENT OF STATE REVENUE

42-20200419.SLOF

Supplemental Letter of Findings: 42-20200419
International Fuel Tax Agreement (IFTA)
For the Year 2018

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

In the face of the Motor Carrier's failure to provide relevant supplemental documentation, failure to maintain the records required by Indiana law and the IFTA, and failure to participate in the opportunity to explain its position during the administrative hearings, the Department was unable to agree that the IFTA assessment should be reduced; the Department did not agree that the Motor Carrier exercised the ordinary business care and prudence necessary to justify abating the negligence penalty.

I. International Fuel Tax Agreement - Tax and Penalty Assessments.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14(a); IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-10-2.1(a)(2); IC § 6-8.1-10-2.1(a)(3); IC § 6-8.1-10-2.1(d); IFTA Articles of Agreement, § R1210 (2017); IFTA Articles of Agreement, § R1220 (2017); IFTA Procedures Manual, § P510 (2017); IFTA Procedures Manual, § P530 (2017; IFTA Procedures Manual, § P540.100 (2017); IFTA Procedures Manual § P550 (2017); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.,* 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue,* 867 N.E.2d 289 (Ind. Tax Ct. 2007); 45 IAC 15-11-2.

Taxpayer argues that the Department's assessment of additional IFTA tax was incorrect because the Department failed to review documents and incorporate information submitted subsequent to the Department's audit.

STATEMENT OF FACTS

Taxpayer is an Indiana motor carrier which - according to publicly available information - transports general freight, food products, farm supplies, and various beverages. Taxpayer provides year-round services to customers in Indiana and outside Indiana.

Taxpayer employs approximately two drivers, two trucks, and one trailer which travel both interstate and intrastate highways in providing Taxpayer's hauling services. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA"). The Indiana Department of Revenue ("Department") conducted an IFTA audit, which resulted in the assessment of additional 2018 IFTA taxes. Along with the assessment of the tax, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was scheduled for September 2020 in order to provide Taxpayer's representative an opportunity to explain the basis for the protest. Taxpayer chose not to participate, and the protest file was closed. Taxpayer asked for a rehearing on the grounds that the representative "was stuck out of state." The request was granted, and a rehearing was scheduled January 2021 in order to allow Taxpayer to explain the basis for the protest. Taxpayer again decided not to participate or to provide additional documentation.

This Supplemental Letter of Findings results.

I. International Fuel Tax Agreement - Tax and Penalty Assessments.

DISCUSSION

A. Indiana's Audit Findings.

The Department conducted a fuel tax audit of Taxpayer's records and determined that Taxpayer owed additional

2018 IFTA fuel tax. The assessment was attributable to the Department's finding that "[t]he distance records presented for audit were not compliant and . . . rated as inadequate." The audit report explains:

> The licensee did not maintain or present adequate distance records for the audit period. The licensee did not verify the accuracy of the distance records presented. The licensee did not maintain records consistently for all records.

The audit report noted that Taxpayer's record-keeping shortcomings "substantially impacted the audit process" and that when Taxpayer did provide the available trip reports, "[T]he necessary information was not contained on them."

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed to the various member jurisdictions in which Taxpayer's vehicles traveled during the period under review.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately $8,000 in additional IFTA tax. Along with that tax, the Department also assessed approximately $1,200 in interest and $8,000 in penalties. Taxpayer disagrees with the assessment of additional tax.

B. Taxpayer's Burden of Establishing That Tax Assessment Should be Abated or Modified.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessments of interest and penalty are incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

C. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and certain Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, https://www.fin.gov.on.ca/en/tax/ifta/ (last visited March 12, 2020). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id*. The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

Taxpayer, as an IFTA licensee, is subject to the record-keeping rules of IFTA. According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

> The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate. (**Emphasis added**).

The IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of

maintaining and then providing verifiable fuel purchase and fuel consumption records.

> The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements is that of maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

> A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

The Procedures Manual allows licensees to maintain these records in various ways. However, Taxpayer does not disagree the third-party's mileage tracking records were deficient. In such cases, in the absence of a functional, verifiable "tracking system," IFTA Procedures Manual, § P540.100 (2017), provides:

> Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:
>
> .005 the beginning and ending dates of the trip to which the records pertain
> .010 the origin and destination of the trip
> .015 the route of travel
> .020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip
> .025 the total distance of the trip
> .030 the distance traveled in each jurisdiction during the trip
> .035 the vehicle identification number or vehicle unit number.

IFTA Procedures Manual, § P530.100 (2017) provides that: "Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200."

IFTA Articles of Agreement, § R1210 (2017) in relevant part, states that:

> .100 In the event that any licensee
> .005 fails, neglects, or refuses to file a tax return when due;
> .010 fails to make records available upon written request by the base jurisdiction; or
> **.015 fails to maintain records from which the licensee's true liability may be determined**, the base jurisdiction shall proceed in accordance with .200 and .300.
> .200 On the basis of the best information available to it, the base jurisdiction shall:
> .005 determine the tax liability of the licensee for each jurisdiction and/or
> .010 revoke or suspend the license of any licensee who fails, neglects, or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.
>
> Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records. (**Emphasis added**).

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax and the now disputed interest and penalty amounts.

D. Taxpayer's Objections to the IFTA Assessment and Penalty.

Taxpayer disagrees with the IFTA assessment and explains as follows:

> The reason I got the $10,000 plus in tax due and interest because I was unable to get to the rest of fuel

> records and supporting documents to prove I don't owe that much since I only run two truck[s] east co[a]st even we run both trucks whole month is shouldn't run over 10,000 mile each month which will never leave me owing that much.

Taxpayer also suggests that if the Department should now agree to a $5,000 reduced assessment the reduction "would be helpful in the tough time considering the business is not operational . . . ." Taxpayer also argues that the Department failed to thoroughly review the documentation provided during and subsequent to the Department's audit.

Upon review of the information available, the Department does not agree that Taxpayer has met its statutory burden under IC 6-8.1-5-1(c) has met its burden of establishing that the original assessment was wrong. Taxpayer's arguments to the contrary are incomplete and inconclusive.

IFTA Articles of Agreement, § R1220 (2017) provides as follows:

> The base jurisdiction may assess the licensee a penalty of $50.00 or **10 percent of delinquent taxes**, whichever is greater, for failing to file a tax return, filing a late tax return, underpaying taxes due. .200 Penalties paid by the licensee shall be retained by the base jurisdiction. .300 Nothing in the Agreement limits the authority of a base jurisdiction to impose any other penalties provided by the laws of the base jurisdiction. (**Emphasis added**).

In the absence of specific guidance provided under either the IFTA Articles of Agreement or the IFTA Procedures Manual and because the ten-percent penalty is "retained by the base jurisdiction," the Department turns to Indiana's own statutory and regulatory regime for direction.

IC § 6-8.1-10-2.1(a)(3) requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. IC § 6-8.1-10-2.1(a)(2) requires a ten-percent penalty if the taxpayer "fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment."

IC § 6-8.1-10-2.1(d) states that, "If a person subject to the penalty imposed under this section can show that the failure to . . . pay the full amount of tax shown on the person's return . . . or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall wave the penalty."

Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed . . . ."

Under IC § 6-8.1-5-1(c), "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." An assessment - including the ten percent IFTA penalty - is presumptively valid.

All parties here involved agree that Taxpayer erred in failing to maintain the detailed records required by the IFTA necessary for Indiana - as the base jurisdiction - to apportion the proper amount of tax owed the various member jurisdictions. In this case, the Department does not agree that Taxpayer "exercised ordinary business care and prudence" indicated by its failure to maintain the required records, its failure to participate the administrative, and its failure to provide the long-promised supplemental documentation.

FINDING

Taxpayer's protest is respectfully denied.

March 23, 2021

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An html version of this document.